

HEARING DATE: April 30, 2013  
OBJECTION DATE: April 23, 2013

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	Case No: 12-12020 (MG)
IN RE	:	
	:	Chapter 11
RESIDENTIAL CAPITAL LLC, et al.	:	
	:	(Jointly Administered)
Debtors.	:	
	:	
-----	X	

**MOTION FOR ORDER PERMITTING MED&G GROUP LP TO FILE A LATE PROOF OF CLAIM**

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COUNSEL TO MOVANT MED&G GROUP LP

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Med&G Group LP ("Movant" or "MED&G"), by and through its undersigned counsel, hereby moves (the "Motion") this Court for an Order pursuant to Section 502 of chapter 11 of the United States Code, 11 U.S.C. § § 101 *et seq.* (the "Bankruptcy Code") and Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9006(b), authorizing it to file a late proof of claim against the estate of Residential Capital LLC, et al. (collectively, the "Debtors"), debtors and debtors-in-possession in the above-captioned jointly administered case; and in support thereof, respectfully states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), and (O). No previous request for the relief sought herein has been made to this Court or any other Court.

### **BACKGROUND**

2. The facts in support of this Motion are set forth in the accompanying affidavit of Brian Burke ("Burke").

3. MED&G purchased the property located at 3735 Coffey Lane, Santa Rosa, CA 95403, Sonoma County (the "Subject Premises") from Debtors on or about September 13, 2010. Movant purchased the Subject Premises for \$244,144.84, the amount of unpaid debt outstanding from the underlying mortgage. Movant recorded the Trustee's Deed upon Sale ("Trustee's Deed") in the Official Records of Sonoma County on or about September 21, 2010. A true copy of the Trustee's Deed Upon Sale is annexed hereto as **Exhibit "A"**. See also the Affidavit of Brian Burke ("Burke Affidavit") at ¶3.

4. The Trustee's Deed prominently displays Movant's address as P.O. Box 5844, Santa Rosa, CA 95402 in the top left corner of the first page. See **Exhibit "A"**, See also the Burke Affidavit at ¶4.

5. Hitoshi and Wakana Inoue, plaintiffs in a civil action against, *inter alia*, GMAC Mortgage, LLC, Executive Trustee Services, LLC, and Movant, commenced in the Superior Court of California, County of Sonoma, Case No. SCV248256 ("Inoue Action"), filed a motion in this Court for relief from the automatic stay imposed under 11 U.S.C. § 362, in order to proceed to trial in the Inoue Action on July 17, 2012 (Doc. No. 0801).

6. The Inoues' motion for relief from the automatic stay was settled by stipulation allowing the Inoues to proceed to trial in the Inoue Action filed on August 17, 2012 (Doc. No. 1206).

7. In order to enable Movant to proceed to trial in the Inoue Action, Movant, without knowledge of the Bar Date, filed a motion for relief from the automatic stay imposed pursuant to 11 U.S.C. §362 on November 27, 2012 (Doc. No. 2274).

8. Movant and Movant's counsel were first made aware of the Bar Date on January 22, 2013, when Debtors filed opposition to Movant's motion for relief from the automatic stay, stating that Movant was barred from seeking monetary damages against Debtors as Movant had not filed a proof of claim prior to the Bar Date (Doc. No. 2680). This is because Movant did not receive any Bar Date Notice in this bankruptcy proceeding. See Burke Affidavit at ¶7.

9. The affidavit of service for the Notice of Deadlines for Filing Proofs of Claim ("Bar Date Notice"), dated August 29, 2012 (Doc. No. 1412) avers that the notice was sent to, *inter alia*, (i) MED AND G GROUP LP- 3104 O Street, #109, Sacramento, CA 95816 ("O Street Address"); (ii) MED & BASE GROUP LP- 2900

Mendocino Ave, Suite 101, Santa Rosa, CA 95402 ("2900 Mendocino Address");  
and (iii) Praxis Capital LLC- 2801 T. Street Sacramento, CA 95816 ("T Street  
Address").

10. Significantly, the Late Claim Notice was **not** served upon Praxis Capital  
LLC or MED&G Group LP at 3333 Mendocino Avenue, Suite 110, Santa Rosa,  
California 95403, the main office of Movant. Burke Affidavit at ¶18.

11. Similarly, Debtors were well aware that Movant was represented by counsel in  
the action of Hitoshi Inoue v. GMAC Mortgage Corp., Case No. SCV245256, as the  
action was commenced against Debtors and Movant on or about September 20, 2010.  
However, Debtors failed to serve Movant's counsel, Zyromski Konicek LLP.

#### **MOVANT'S BUSINESS STRUCTURE**

12. MED&G is a California limited partnership with its principle place of business  
located in Santa Rosa, California. Praxis Capital, LLC ("Praxis Capital") has assumed the  
responsibility of general partner of MED&G.

13. Praxis Capital is headquartered in Santa Rosa with an address of 3333  
Mendocino Avenue, Suite 110, Santa Rosa, CA 95403 ("Santa Rosa Office"). All of the  
administrative staff for both Praxis Capital and MED&G are located in the Santa Rosa  
Office. Brian Burke works solely out of the Santa Rosa Office, and is the only individual  
at MED&G or Praxis Capital who has knowledge of the facts and circumstances  
concerning the Inoue Action. Mr. Burke is the only person in any of the MED&G or Praxis

Capital offices who has been involved in that litigation, and the only person in any offices with knowledge of the Debtors' bankruptcy filing insofar as it affects the Inoue Action.

14. Praxis Capital does maintain a satellite office at 2801 T Street, Sacramento CA 95816 ("T Street Address"). Ten of Praxis Capital's twenty-five employees are located at the T Street Address. The city of Sacramento is located approximately 100 miles from the Santa Rosa Office, where the other fifteen Praxis employees are located. The T Street office is maintained solely for acquisitions of property in the Sacramento area. There is no legal counsel or any member of the staff at the T Street office who is familiar with, or experienced in dealing with litigation or litigation documents. They currently do not conduct business on behalf of MED&G Group. The office rarely receives mail, and only occasionally checks the post office box at 3104 O Street, #109. *Id.* at ¶14. In the event that the Bar Date Notice was received at the T Street Office, the acquisitions staff had no knowledge of the pending bankruptcy proceeding, and would not have understood the significance of the Bar Date Notice, and thus not sent the Bar Date Notice to the Santa Rosa Office. *Id.* at ¶14.

15. The T Street Office address is rarely used for mailings and is not listed on any corporate charters or locations for service of process for Praxis or any of its subsidiaries. All addresses used for mailings and process are the Santa Rosa office. *Id.* at ¶15.



**ARGUMENT**

**MOVANT SHOULD BE GRANTED LEAVE TO FILE A LATE PROOF OF CLAIM UNDER  
BANKRUPTCY RULE 9006(b)(1)**

16. Bankruptcy Rule 9006(b)(1) empowers the Court to permit a claimant to file a late proof of claim. Rule 9006(b)(1) states, in pertinent part, that:

when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion... on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b)(1).

17. The U.S. Supreme Court, in Pioneer Inv. Servs. Co. v. Brunswick Assocs. L.P., 507 U.S. 380, 388 (1993), held that, "by empowering the courts to accept late filings where the failure to act was the result of excusable neglect, *Rule 9006(b)(1)*, Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control" (internal quotations omitted).

18. The Supreme Court in Pioneer held determination of whether the neglect is excusable "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission, including [1] the danger of prejudice to the debtor, [2] the length of delay and its potential impact on judicial proceedings, [3] the reason for

the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith" *id.* at 395.

19. Since Pioneer, Courts including the Second Circuit Court of Appeals, have "focused on the third factor: the reason for the delay, including whether it was within the reasonable control of movant" (internal quotations omitted) Midland Cogeneration Venture L.P. v. Enron Corp. (In re Enron Corp.), 419 F.3d 115, 122 (2d Cir. N.Y. 2005).

#### **A. DANGER OF PREJUDICE TO THE DEBTOR**

20. This factor weighs heavily in favor of Movant as there is no prejudice to the Debtor in allowing Movant to file a late proof of claim.

21. The progeny of Pioneer has set forth factors to consider in determining whether there may be prejudice. The factors include "the size of the late claim in relation to the estate, whether a disclosure statement or plan has been filed or confirmed with knowledge of the existence of the claim, the disruptive effect that the late filing would have on a plan close to completion or upon the economic model upon which the plan was formulated and negotiated." In re Keene Corp., 188 B.R. 903, 909 (Bankr. S.D.N.Y. 1995).

22. Here, the claim, although currently unascertainable, is less than \$500,000.00 and the value of Debtors' bankruptcy estate exceeds **\$15,000,000,000.00**. Therefore, Movant's claim is less than .003% of the value of the Debtors' bankruptcy estate.

Accordingly, no prejudice will befall Debtors, as this claim consists of such a small portion of the Debtors' bankruptcy estate.

23. Also, no reorganization plan has been filed or confirmed, and thus it will not be prejudicial to Debtors to allow Movant to file a late proof of claim at this time.

**B. THE LENGTH OF DELAY AND ITS POTENTIAL IMPACT ON JUDICIAL PROCEEDINGS**

24. This factor weighs in favor of allowing Movant to file a late proof of claim. This motion was filed less than four months after the Bar Date, and less than two months after Movant learned of the Bar Date. The delay is insignificant given the current state of the case.

**C. THE REASON FOR THE DELAY, INCLUDING WHETHER IT WAS WITHIN THE REASONABLE CONTROL OF THE MOVANT**

25. This factor weighs in favor of Movant as service of the Bar Date Notice was not sent directly to Movant or Movant's counsel.

26. The affidavit of service for the Bar Date Notice avers that the notice was sent to three locations:

- a. MED AND G GROUP LP- 3104 O Street, #109, Sacramento, CA 95816;
- b. MED & BASE GROUP LP- 2900 Mendocino Ave, Suite 101, Santa Rosa, CA 95402; and
- c. Praxis Capital LLC- 2801 T. Street Sacramento, CA 95816

27. First, MED&G Group, LP was allegedly served at 3104 O Street, #109, Sacramento, CA 95816. However, this address is a private mailbox and MED&G Group, LP does not conduct business using this address. Burke Affidavit at ¶13.

28. Second, the affidavit of service of the Bar Date Notice avers that "MED & Base Group LP" was served at the 2900 Mendocino Ave. Address. This averment is problematic for two reasons. First, the entity "MED & Base Group LP" does not exist. Furthermore, MED&G Group and Praxis Capital moved from this location to the Santa Rosa Office nearly one and a half years prior to the alleged mailings of the Bar Date Notice. Debtors thus served a non-existent entity at an invalid address. *Id.* at ¶12.

29. Third, the T Street Office is solely maintained for acquisitions of property in the Sacramento, California area. There is no legal counsel, nor any member of the staff at the T Street Office who is familiar with, or experienced in dealing with litigation or litigation documents. Additionally, only Brian Burke has dealt with the litigation surrounding the Subject Premises. Burke Affidavit at ¶14. Any staff member at the T Street Office who may have received the Bar Date Notice would be unaware of what to do with such a notice in light of their position solely as an employee of the acquisitions arm of Praxis Capital. No one at the T Street Office has any relation to, or involvement with, either the Inoue Action or Debtors' bankruptcy filing.

30. The Bar Date Notice was not served upon Movant, Praxis Capital or any of its subsidiaries at 3333 Mendocino Avenue, Suite 110 Santa Rosa, CA 95403, nor was the

Bar Date Notice served upon Zyromski Konicek LLC, the attorneys for Movant in the Inoue Action.

31. Finally, the Trustee's Deed unequivocally shows the address of Movant as P.O. Box 5844, Santa Rosa, CA 95402. Yet, Debtors failed to serve this address.

32. The fact that the Bar Date Notices were purportedly sent to the wrong addresses is the Debtors' error- not Movant's error. Therefore, Movant should not be penalized for Debtors' error, and should be allowed to file a late proof of claim.

#### **D. WHETHER MOVANT ACTED IN GOOD FAITH**

33. Movant submits it acted in good faith in this matter. Upon learning of the Bar Date, Movant expeditiously moved to file a late proof of claim by filing this motion.

#### **CONCLUSION**

34. Based on the foregoing, the factors set forth in Pioneer weigh heavily in favor of granting Movant leave to file a late proof of claim.

35. No prior request for the relief requested herein has been made to this Court or any other Court.

**WHEREFORE**, Movant respectfully requests the Court grant Movant (i) leave to file a late proof of claim, in substantially the form of order attached hereto as **Exhibit "B"**, and (ii) for such other and further relief as this Court may deem just and proper.

Dated: Brooklyn, New York  
March 18, 2013

Respectfully submitted,

/s/ William E. Baney  
William E. Baney  
Wenig Saltiel LLP  
26 Court Street, Suite 1200  
Brooklyn, New York 11242  
Tel: (718) 797-5700  
Fax: (718) 522-0356



3. Movant purchased the property located at 3735 Coffey Lane, Santa Rosa 95403 (the "Subject Premises") from Debtors on September 13, 2010 by trustee's deed upon sale ("Trustee's Deed"). A true and correct copy of the Original Trustee's Deed Upon Sale is annexed hereto as **Exhibit "A"**.
4. The address for Movant was prominently displayed on the top of the first page of the Trustee's Deed, and stated that Movant's address was P.O. Box 5844, Santa Rosa, CA 95402. See **Exhibit "A"**. No other addresses for the Movant were given in the Trustee's Deed.
5. Hitoshi and Wakana Inoue, former owners of the Subject Premises commenced a civil action against, *inter alia*, GMAC Mortgage, LLC and Executive Trustee Services, LLC, and Movant, filed in the Superior Court of California, County of Sonoma, Case No. SCV248256 ("Inoue Action").
6. Thereafter, Movant, without knowledge of the Bar Date, filed a motion for relief from the automatic stay imposed pursuant to 11 U.S.C. §362 on November 27, 2012, so that Movant could proceed to trial in the Inoue Action.
7. Movant and Movant's counsel were first made aware of the Bar Date on January 22, 2013, when Debtors filed opposition to Movant's motion for relief from the automatic stay, stating that Movant was barred from seeking monetary damages against Debtors as Movant had not filed a proof of claim prior to the Bar Date.



8. The affidavit of service for the Notice of Deadlines for Filing Proofs of Claim ("Bar Date Notice"), dated August 29, 2012 avers that the notice was sent to, among others, (i) MED AND G GROUP LP- 3104 O Street, #109, Sacramento, CA 95816 ("O Street Address"); (ii) MED & BASE GROUP LP- 2900 Mendocino Ave, Suite 101, Santa Rosa, CA 95402 ("2900 Mendocino Ave. Address"); and (iii) Praxis Capital LLC- 2801 T Street Sacramento, CA 95816 ("T Street Address"). Critically for purposes of this Late Claim Motion, the Notice was not sent to my correct address of 3333 Mendocino Avenue, Suite 110, Santa Rosa, California 95403.
9. As explained below, the addresses listed in the affidavit of service are neither correct addresses for Movant nor are they addresses on record with the California Secretary of State for Movant.
10. MED&G is a California limited partnership with its principle place of business located in Santa Rosa, California. Praxis Capital, LLC has assumed the responsibility of general partner of MED&G.
11. Praxis Capital, LLC is headquartered in Santa Rosa with an address of 3333 Mendocino Avenue, Suite 110, Santa Rosa, CA 95403 ("Santa Rosa Office"). All of the administrative staff for both Praxis Capital and MED&G are located in the Santa Rosa Office. I myself work out of the Santa Rosa Office, and am the only individual at MED&G or Praxis who has knowledge of the facts and circumstances concerning the Inoue Action. I have been the only person in this office who has been involved in that litigation, and the only person in our office

who has knowledge of the Debtors' bankruptcy filing insofar as it affects the Inoue Action.

12. The affidavit of service of the Bar Date Notice avers that "MED& Base Group LP" was served at the 2900 Mendocino Ave. Address. This averment is problematic for two reasons. First, the entity "MED & Base Group" does not exist. Furthermore, MED&G Group and Praxis Capital moved from this location to the Santa Rosa Office nearly one and a half years prior to the alleged mailings of the Bar Date Notice. Debtors thus served a non-existent entity at an invalid address.
13. MED&G Group, LP was allegedly served at 3104 O Street, #109, Sacramento, CA 95816. This address is a private mailbox and MED&G Group, LP does not conduct business using this address.
14. Praxis Capital does maintain a satellite office at 2801 T Street, Sacramento CA 95816 ("T Street Address"). Ten of Praxis Capital's twenty-five employees are located at the T Street Address. The city of Sacramento is located approximately 100 miles from our office in Santa Rosa, where the other fifteen Praxis employees are located. The T Street office is maintained solely for acquisitions of property in the Sacramento area. There is no legal counsel or any member of the staff at the T Street office who is familiar with, or experienced in dealing with litigation or litigation documents. They currently do not conduct business on behalf of MED&G Group. The office rarely receives mail, and only occasionally checks the post office box at 3104 O Street, #109. Any staff member who may have

received the Bar Date Notice would be unaware of what to do with such a notice in light of their position solely as an employee of the acquisitions arm of Praxis Capital. No one at the T Street Address has any relation to, or involvement with, either the Inoue Action or Debtors' bankruptcy filing. Thus, even if the Bar Date Notice was received at the T Street Office, the acquisitions staff had no knowledge of the pending bankruptcy proceeding, and would not have understood the significance of the Bar Date Notice, and thus not sent the Bar Date Notice to the Santa Rosa Office.

15. The T Street Office address is rarely used, and is not listed on any corporate charters or locations for service of process for Praxis or any of its subsidiaries. All of those functions are handled in the Santa Rosa office.
16. No proof of claim notice was served on either of MED&G Group's valid addresses, either 3333 Mendocino Avenue, Suite 110, Santa Rosa, California 95403 address or P.O. Box 5844, Santa Rosa, California 95402.
17. My counsel has informed me that the danger of prejudice to the Debtors is minimal as the claim is less than \$500,000.00, and the estate of the debtors exceeds **\$15,000,000,000.00**; thus Movant's claim is less than .003% of Debtors' bankruptcy estate.
18. Similarly, I have been informed that no reorganization plan has been filed or confirmed, and there would be no disruptive effect of allowing the filing of a late proof of claim on behalf of MED&G.

19. As stated above, the reason for the delay was not within the reasonable control of MED&G. Service of the Notice of Deadline for Filing Proof of Claim was not mailed to MED&G, or to counsel for MED&G (Zyromski Konicek LLP, counsel in the Inoue Action). The Sacramento T Street location where the mailing was allegedly sent is a satellite office 100 miles away that deals solely with acquisitions and has no knowledge or experience with litigation, much less bankruptcy, and therefore cannot be faulted for any failure to forward the notice to our main office.
20. Lastly, there is no bad faith in making this motion. Rather, MED&G has expeditiously moved for leave to file a late proof of claim after learning of the deadline.

WHEREFORE, based on the foregoing, it is respectfully requested that the Court grant MED&G's Late Claim Motion in its entirety, together with such other and further relief as this Court may deem just and proper in the circumstances.



BRIAN BURKE

Sworn before me on this 18  
Day of March, 2013



Notary Public

please see attached

## CALIFORNIA JURAT WITH AFFIANT STATEMENT

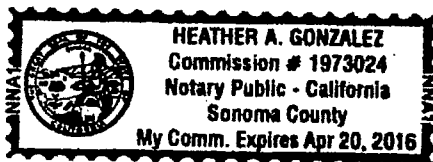
- ☒ See Attached Document (Notary to cross out lines 1-6 below)  
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 \_\_\_\_\_  
2 \_\_\_\_\_  
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Signature of Document Signer No. 1 \_\_\_\_\_ Signature of Document Signer No. 2 (if any) \_\_\_\_\_

State of California

County of Sonoma



Subscribed and sworn to (or affirmed) before me on this

19 day of MARCH, 2013, by  
Date Month Year

(1) Brian Burke  
Name of Signer

proved to me on the basis of satisfactory evidence  
to be the person who appeared before me (.) BT

~~(and~~

(2) \_\_\_\_\_  
Name of Signer

proved to me on the basis of satisfactory evidence  
to be the person who appeared before me.)

Signature

Heather A. Gonzalez  
Signature of Notary Public

Place Notary Seal Above

### OPTIONAL

*Though the information below is not required by law, it may prove  
valuable to persons relying on the document and could prevent  
fraudulent removal and reattachment of this form to another document.*

#### Further Description of Any Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here